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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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9
10 MARIA VARELA,

11 Plaintiff,

12 v.

13 DEIRDRE FYKE,

14 Defendant.
15

Case No. SACV 17-1217-PSG (KK)

MEMORANDUM AND ORDER
DISMISSING ACTION WITHOUT
PREJUDICE

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17 I.

18 **INTRODUCTION**

19 On July 17, 2017, Defendant Deirdre Fike, Federal Bureau of Investigations
20 Assistant Director in Charge (“Defendant”) removed the instant action to this
21 Court pursuant to 28 U.S.C. § 1442(a)(1). ECF Docket No. (“Dkt.”) 1. This
22 Court, having reviewed the documents filed in both this Court and the Orange
23 County Superior Court, finds the action is subject to dismissal because there is no
24 operative complaint.

25 II.

26 **PROCEDURAL HISTORY**

27 On June 2, 2017, Plaintiff Maria Varela (“Plaintiff”) filed a Request for a
28 Civil Harassment Restraining Order (“Request”) against Defendant in Orange

1 County Superior Court, Maria Varela v. Deirdre Fike, Case No. 30-2017-
2 00923808. Dkt. 1-1, Notice of Removal Exhibit (“Ex.”) 1 at 1-6. Plaintiff sought a
3 temporary restraining order (“TRO”) to “stop satellite terrorism and attacks with
4 satellites from the FBI.” *Id.*, Ex. 1 at 6. On June 5, 2017, the Orange County
5 Superior Court issued a TRO against Defendant. *Id.*, Ex. 1 at 12-21. The court set
6 an Order to Show Cause (“OSC”) hearing for June 28, 2017, and ordered the TRO
7 would expire after the hearing. *Id.* On June 15, 2017, the superior court continued
8 the OSC to July 19, 2017. *Id.* at 27-28.

9 On July 17, 2017, Defendant removed the instant action to this Court. Dkt.
10 1.

11 On September 14, 2017, the Court issued an Order to Show Cause why the
12 action should not be dismissed. Dkt. 9. The Court granted Plaintiff until October
13 5, 2017 to file a response and expressly cautioned Plaintiff that “**failure to timely**
14 **file a response to this Order will result in the Court dismissing this action**
15 **without prejudice for failure to prosecute and comply with court orders.**” *Id.*
16 at 3 (emphasis in original). Plaintiff has not filed a timely response or requested an
17 extension of time to do so.

18 III.

19 DISCUSSION

20 A. THE TRO IS EXPIRED

21 A state court-issued TRO expires upon expiration of its effective period
22 under state law, but no later than fourteen days after the date of removal, unless
23 extended by the court for good cause, or by consent of the adverse party. Fed. R.
24 Civ. P. 65(b)(2); Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto
25 Truck Drivers, Local No. 70, 415 U.S. 423, 426, 435-38, 94 S. Ct. 1113, 39 L. Ed. 2d
26 435 (1974); see also Logvinov v. Wells Fargo Bank, No. C-11-04772-DMR, 2011
27 WL 6141003, at *1 (N.D. Cal. Dec. 9, 2011). Pursuant to Section 527(d)(4) of the
28 California Code of Civil Procedure, if an opposing party obtains a continuance of

1 the hearing on the preliminary injunction, “the temporary restraining order shall
2 remain in effect until the date of the continued hearing.” Cal. Code Civ. Proc. §
3 527(d)(4).

4 Here, the TRO would have expired after the continued July 19, 2017 hearing,
5 but in no event later than fourteen days after July 17, 2017, when Defendant
6 removed the action to federal court. Plaintiff has not moved to extend the TRO.
7 Therefore, the latest date on which the TRO expired was July 31, 2017.

8 **B. THERE IS NO OPERATIVE COMPLAINT**

9 “A civil action is commenced by filing a complaint with the court.” Fed. R.
10 Civ. P. 3. “A complaint must contain the following: (1) a statement of the grounds
11 for jurisdiction, (2) a short and plain statement of the claim showing why the
12 Plaintiff is entitled to relief, and (3) a demand for relief.” Fed. R. Civ. P. 8(a).
13 Absent an operative complaint, an action is subject to dismissal. See Jaquess v.
14 United States, No. 2:16-CV-01710-APG-VCF, 2016 WL 7115890, at *1 (D. Nev.
15 Oct. 24, 2016), report and recommendation adopted, 2016 WL 7116004 (D. Nev.
16 Dec. 6, 2016) (finding the action subject to dismissal because there was no
17 operative complaint as required to initiate an action in federal court pursuant to
18 Federal Rule of Civil Procedure 3).

19 Here, the Request for a Civil Harassment Restraining Order that Plaintiff
20 filed in Orange County Superior Court is not a complaint. Id. Moreover, as
21 discussed above, the relief sought in the Request has expired.¹ Therefore, there is
22 no operative complaint in this action, and the action is subject to dismissal.

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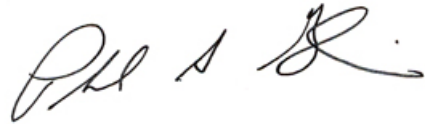
25 _____
26 ¹ In addition, the Court lacks authority to extend the TRO absent an operative
27 complaint. See Carnero v. Elk Grove Fin., LLC, No. 16-CV-03606-BLF, 2017 WL
28 1315575, at *4 (N.D. Cal. Apr. 6, 2017) (denying TRO where no operative
complaint); Perez v. San Miguel Homes for the Elderly, LLC, No. 15-CV-05556-
DMR, 2016 WL 3709622, at *1 (N.D. Cal. Feb. 9, 2016) (“[T]he claims that form
the basis for the request for a TRO must be part of the operative complaint.”).

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IV.
CONCLUSION

Thus, it is ORDERED that Judgment be entered DISMISSING this action without prejudice.

Dated: 10/13/17



HONORABLE PHILIP S. GUTIERREZ
United States District Judge

Presented by:



KENLY KIYA KATO
United States Magistrate Judge